SUPREME COURT, U. S.

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No. 521

# In the Supreme Court of the United States

OCTOBER TERM, 1968

DORRIS E. DREYUS,

*Petitioner,*

vs.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER,

*Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

## BRIEF FOR RESPONDENT IN OPPOSITION

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### I. Petitioner's Statement of the Issues Before the Court of Appeals is Inaccurate.

Petitioner's statement of the case is inaccurate in that it states (Pet. p. 5) that the right of Michael Reese Hospital and Medical Center (hereinafter "Michael Reese" or "respondent") to the life insurance proceeds depends upon the validity of two orders, dated respectively October 7, 1957 and November 18, 1958, adjudging petitioner in contempt

of the October 25, 1955 decree divorcing Philip Dreyfus from petitioner. Respondent's rights are not based on these orders.

Michael Reese's right to the insurance proceeds derives from Philip Dreyfus' exercise of a testamentary power of appointment in favor of Michael Reese. Any claims petitioner might have had to these proceeds were nullified by the provisions of paragraphs 6 and 7 of the Divorce Decree (RS 18-19). Throughout this proceeding, petitioner's claim has only been that because certain payments specified in the Divorce Decree were not made, somehow thereby (and the operative legal theory has never been made clear) the provisions of the Divorce Decree terminating petitioner's interests in the insurance policies were themselves rendered without force or effect. The two contempt orders, therefore, are relevant, but only to establish (as a matter of law) why petitioner did not receive certain sums provided for under the Divorce Decree.

Thus, even if the Court of Appeals had been wrong (which it was not) in holding that the contempt orders were immune from collateral attack, nevertheless petitioner would not be entitled to prevail. She would still have to establish that, despite the principle of Illinois Law that life insurance proceeds are immune from the claims of the decedent's creditors (*Veith* v. *Chicago Title & Trust Co.*, 307 Ill. App. 99, 30 N.E.2d 126 (1940)) and despite the provisions of the Divorce Decree, her purported claims against Philip Dreyfus would take procedence over Michael Reese's position as testamentary appointee.

However, these infirmities in petitioner's claims to the insurance proceeds were not reached by the Court of Appeals because it held that the contempt orders were immune from collateral attack. In so holding the Court of Appeals was clearly correct.

## II. The Orders Entered in the Illinois Divorce Proceeding were Entirely Consistent with Constitutional Requirements.

In her statement of Questions Presented petitioner insists that the contempt orders were rendered in "an *ex parte* proceeding where the court lacked both *in personam* and subject matter jurisdiction." (Pet. p. 2) This characterization is totally erroneous.

Clearly the Superior Court of Cook County, Illinois had, in 1957 and 1958, jurisdiction of the subject matter. The 1955 Divorce Decree awarded to Philip custody of the two children born of the marriage subject to petitioner's right to have the children's company at her residence in Los Angeles, California during the Summer and Christmas vacations. In 1957 and again in 1958 petitioner violated these custody provisions by refusing to return the children. Certainly the Superior Court had subject matter jurisdiction to enter such orders as would be appropriate to enforce the custody provisions of its Decree.

Clearly also the Superior Court had *in personam* jurisdiction to enter the contempt orders. In 1954, when the complaint for divorce was filed, and in 1955, when the Decree was entered, petitioner was a resident of Illinois. Petitioner appeared and was represented by her own counsel throughout the divorce proceeding. Prior decisions of this court and lower federal courts have clearly established that *in personam* jurisdiction, once acquired, continues with respect to any proceeding concerning contempt of orders or decrees thereafter entered, irrespective of where such acts of contempt are committed. *Leman* v. *Krentler-Arnold Co.*, 284 U.S. 448 (1932); *Michigan Trust Co.* v. *Ferry*, 228 U.S. 346 (1913); *Binkley* v. *U.S.*, 282 Fed. 244 (8th Cir. 1922); *Tilghman* v. *Tilghman*, 57 F. Supp. 417 (D.D.C. 1944); Restatement, *Conflict of Laws*, § 76.

It is equally false and misleading to state, as petitioner does, that the contempt orders were entered in *"ex parte"* proceedings. In each instance petitioner received notice of the hearing which resulted in the contempt order.* A hearing is not rendered *"ex parte"* because, after notice, the opposing party elects not to appear either in person or by counsel.

Petitioner has never, at any stage of this case, cited a single decision calling into question the propriety of the actions of the Superior Court of Cook County in entering the orders it did in 1957 and 1958 in efforts to enforce the custody provisions of the Divorce Decree. This weakness in petitioner's position would exist even if petitioner were in the position of appealing directly from those orders. In point of fact she is not. Rather she is attempting to

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* The dates of service of notice do not appear in the Record before this Court. This results from the fact that neither before the District Court nor before the Court of Appeals was any claim made by petitioner that she did not receive timely notice. Exhibit B to Michael Reese's Answer to the counterclaim for interpleader contains an affidavit of service stating that petitioner was served personally with notice of the 1958 contempt hearing on October 2, 1958, sixteen days before the second contempt order was entered. Said Exhibit B also contains the verified petition of Philip Dreyfus, which was also served upon petitioner on October 2, 1958, reciting (1) that petitioner and her Los Angeles attorneys were duly served by registered mail with notice prior to entry by the Superior Court of Cook County of an order on September 9, 1957 directing petitioner to return the older child to Chicago, (2) that the order entering a rule to show cause and continuing the matter for hearing on October 7, 1957 was served by registered mail upon petitioner and her Los Angeles attorney, and (3) that the contempt order of October 7, 1957 was once again served upon petitioner and her Los Angeles attorney by registered mail.

attack them collaterally in a subsequent proceeding. Thus even if these orders were erroneous as a matter of state law, they were clearly entered by a court having jurisdiction. They cannot now be nullified.

The decision below does not present any federal question of substance; there are no conflicting decisions of other courts of appeal or of this Court; no conflict with applicable state law is presented. Accordingly, the petition for certiorari should be denied.

Respectfully submitted,

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